

From: Robert Sawyer [mailto:Robert.Sawyer@bbklaw.com]

Sent: Friday, July 01, 2011 6:33 PM

To: Jemaa, Fethi Ben; 'staff@oal.ca.gov'

Cc: 'Mario Santoyo'; Mike Wade; Brandon Souza; Ron Jacobsma; Frances Mizuno; Obegi, Doug; Davidoff, Baryohay; 'dnelson@sldmwa.org'; Kevin Wang

Subject: Proposed Regulatory Action: Chapter 5.1, Sections 597, 597.1, 597.2, 597.3 and 597.4 to Title 23, Division 2 of the California Code of Regulations

To: Reference Attorney, Office of Administrative Law, and Department of Water Resources

Re: Agricultural Water Measurement, Proposed Regulatory Action, addition of Chapter 5.1, Sections 597, 597.1, 597.2, 597.3 and 597.4 to Title 23, Division 2 of the California Code of Regulations

Dear Ladies and Gentlemen,

These brief comments are submitted by this email only, by the undersigned as special counsel for the Friant Water Authority, and are primarily responsive to certain matters set forth in the comments previously submitted by attorney Doug Obegi on behalf of the Natural Resources Defense Council, with specific reference to Section 597.1(i) of the proposed regulations.

Reference is made to those certain letters in the administrative record submitted to Baryohay Davidoff of the Department of Water Resources, dated March 23 and April 29, 2011, respectively, and signed by Ronald D. Jacobsma on behalf of the Friant Water Authority and Daniel G. Nelson on behalf of the San Luis & Delta-Mendota Water Authority.

As explained by the information in those letters, Section 597.1(i) of the proposed regulations is clearly authorized by Sections 10608.48(b)(1), 10826(e) and 10828(a) of the Water Code, and is in furtherance of the Legislature's intent in this regard, including the Legislature's recognition of the relationship between SBX7-7 and longstanding provisions federal law in this area in the Central Valley Project Improvement Act and Reclamation Reform Act (citations to which are included in each of the aforementioned letters). As confirmed by the Department of Water Resources and the California Water Commission in the course of development of the regulations, both the authorizing legislation and the proposed regulation recognize that for nearly two decades Agricultural Water Suppliers that are also Central Valley Project (CVP) contractors have been subject to the regularly-updated requirements of the Bureau of Reclamation's Conservation and Efficiency Criteria, and will continue to be required to operate in compliance therewith. When combined with the statutory and regulatory condition that the periodic conservation plans and updates thereto filed by CVP contractors with the Bureau of Reclamation henceforth include all water supplied by each contractor, including non-CVP water, the exemption confirmed by proposed Section 597.1(i) possesses the clarity required by Government Code Section 11349.1, and is consistent with the legislation and the Department of Water Resources' authority thereunder.

Thank you,

- Rob Sawyer

Robert M. Sawyer

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